

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1820 of 1989

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgement?-Yes.
2. To be referred to the Reporter or not?-Yes. :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?-No.
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No. :

HIRALAL BHAGWATI

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

Mr.S.N. Soparkar, with
MR MJ THAKORE for Petitioners
Mr.Kureshi, with
MR RP BHATT for Respondent No. 1, 2, 3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE B.C.PATEL

Date of decision: 18/04/2000

C.A.V. JUDGEMENT: (Per B.C. Patel, J.)

1. This petition under Article 226 of the Constitution of India, is filed by the Trustees of the Gujarat Law Society Karmachari Kalyan Nidhi, Ahmedabad.

2. The short facts leading to the present proceedings are as under :-

Respondent-Commissioner of Income Tax (hereinafter referred to as "C.I.T.") considered the application dated 21.7.1981 of the Gujarat Law Society Karmachari Kalyan Nidhi (hereinafter referred to as "The Trust") submitted under Section 12A(a) of the Income Tax Act, 1961 (hereinafter referred to as "The Act"), and vide letter dated 21.4.1982 (Annexure 'E') informed the said trust that the same has been registered under Section 12A(a) of the Act. For the assessment year 1985-'86, the Trust was denied the exemption and benefit under Section 80G(5) of the Act by an order dated 10.2.1989 by the Income Tax Officer (hereinafter referred to as "I.T.O."). Notices dated 10.2.1989 were issued by the I.T.O. under Section 148 of the Act for the assessment year 1984-'85, and under Section 274 read with Sections 273(2)(b), 271(1)(a) and 271(1)(c) of the Act for the assessment year 1985-'86. Respondents, though served, have filed no reply and, therefore, uncontroverted averments made in the petition are required to be accepted.

3. The Trust was settled by Petitioner No.2 by executing a Deed of Trust dated 21st July, 1981, vide Annexure 'B'. The Rules and Regulations of the Trust framed by the settler and the Trustees on 21st July, 1981 are at Annexure 'C'. The Trust was registered as a Public Charitable Trust with the Office of the Charity Commissioner under the provisions contained in the Bombay Public Trusts Act, 1950, vide registration No.CH/4648/Ahmedabad, for which a certificate of registration was issued on 28th January, 1982, vide Annexure 'D'. The petitioners submitted an application on 9.3.1982 for being registered under Section 12A(a) of the Act, which was entered at No.G.137/IV in the Register of Applications under Section 12A(a) maintained by the C.I.T. after making all necessary enquiries whether the Trust is a Public Charitable Trust or not. The letter issued by the C.I.T. on 21st April, 1982 in response to the application dated 9.3.1982 for the aforesaid purpose is placed on record vide Annexure 'E'. It is in view of the registration Annexure 'E', the petitioners addressed a letter dated 17.2.1988 vide Annexure 'F' with relevant record to the concerned I.T.O. for being recognized under Section 80G of the Act so that the Trust can avail

of the benefit of exemption under Section 80G of the Act. It is in response to this application the concerned I.T.O., vide letter dated 26.2.1988, Annexure 'G', communicated that "the object of the Trust is to help by giving financial aid to the employees of the Gujarat Law Society, in cases of death of an employee during his / her services, illness or permanent disability which incapacitates the employee to discharge his / her duties", and held that the objects of the Trust are not for general public utility and hence, the Trust is not entitled to get exemption under Section 80G of the Act.

4. On or about 10.2.1989, respondent No.2 made an Assessment Order for the assessment year 1985-'86, and held that from the object of the petitioner-Trust, it is clear that the benefits are limited to its members only, who cannot be termed as "members of the public", and ultimately, held that the Trust is liable for the tax and computed the total income of the Trust at Rs.23,633/-, vide Annexure 'J' on 10.2.1989. Notice was issued under Section 148 of the Act, vide Annexure 'K' and notices were also issued to show cause, why penalty should not be imposed, under Section 274, read with Sections 273(2)(b), 271(1)(a) and 271(1)(c) of the Act, vide Annexure 'L' Collectively.

5. Learned counsel for the petitioners submitted that so far as notice under Section 148 of the Act is concerned, the respondents have filed no affidavit and there are no reasons on record for reopening the assessment. According to the learned counsel, the notice issued is without jurisdiction as notice under Section 148 of the Act is to be issued only where "income has escaped assessment". No material is placed before the Court indicating that the income has escaped assessment. The Apex Court, in the case of Madhya Pradesh Industrial Ltd. v. Income-Tax Officer, Nagpur, (1970) 77 I.T.R. 268, considered similar situation. The appellant before the Apex Court approached the High Court, inter alia, praying for an....

any action on the notice as the Income Tax Officer had no reason to believe that by reason of omission or failure on the part of the Company to disclose fully and truly all material facts, income has escaped assessment or has been under-assessed. Before the Apex Court, decision taken earlier in similar matters were placed for consideration to accept the contention advanced on behalf of the assessee. At page 276, the Apex Court pointed out :-

"... In those cases, the Company in its writ petitions had repudiated the assertion of the Income-tax Officer that he has reason to believe that due to the omission or failure on the part of the company to give material facts, some income had escaped assessment. Under those circumstances one would have expected the officer who issued the notices under section 34(1)(a) to file an affidavit setting out the circumstances under which he formed the necessary belief. We were told that one Mr.Pandey had issued the notice in question. That officer had not filed any affidavit in these proceedings. The proceedings recorded by him before issuing the notice have not been produced nor his report to the Commissioner or even the Commissioner's sanction has not been produced. Hence, it is not possible to hold that the Income-tax Officer had any reason to form the belief in question or the reasons before him were relevant for the purpose. We have no basis before us to hold that the Income-tax Officer had jurisdiction to issue the impugned notices. Hence, the proceedings taken by him have to be quashed"

6. In the case of Union of India and others v. Rai Singh Deb Singh Bist and another, (1973) 88 ITR 200, in writ petitions, the assessee called upon the Income Tax Officer to produce the report made by him to the Board as well as the order of the Board thereon as there was no relevant material before the Income Tax Officer before issuance of notice on the basis of which he could have had reason to believe that any income had escaped assessment. Neither the....

Tax Officer cared to produce the report made by the Income Tax Officer to the Board or the order of the Board. Even at the time of hearing, an application was made, calling upon the Union of India and the Income Tax Officer to produce those documents. In response thereto, an affidavit was filed, stating that the relevant records could not be traced from the file. No reason was given for not producing the records, which would contain copies of the documents. When the Income Tax Officer made a report and the order was received by him, then the same

must be in the file of the Income Tax Officer. These copies even were not produced. The Court observed :-

"... We are constrained to come to the conclusion that the records in question were not produced because they did not assist the department's case. Under these circumstances, it is not possible to come to the conclusion that the facts necessary to confer jurisdiction on the Income-tax Officer to proceed under section 34(1)(a) had been established "

7. In view of the aforesaid legal position, it is very clear that when a notice has been issued on the ground that the income has escaped assessment, then it becomes the duty of the concerned respondent to file an affidavit and to place necessary material before the Court and having not done so, the notice issued by the respondent No.2, vide Annexure 'K' dated 10.2.1989 under Section 148 of the Act is hereby quashed.

8. So far as the registration aspect is conc....

it is required to be noted that the assessee-Trust was a Trust, registered under the provisions contained in the Bombay Public Trusts Act, 1950. As indicated earlier, the copy of the Trust Deed is placed vide Annexure 'B'. The Rules and Regulations framed by the Trust, and the registration certificate issued by the Deputy Charity Commissioner are placed on record vide Annexures 'C' and 'D'. Section 12A of the Act indicates the "conditions as to registration of trusts, etc." Section 12A(a) reads as under :-

"12A. The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely :-

(a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution,

whichever is later :

Provided that the Commissioner may,
in his discretion, admit an
application for the registration of
any trust or institution after the
expiry of the period aforesaid ;

(b) "

The assessee continues to be a registered trust even today under the provisions contained in the aforesaid Act.

9. So far as the charitable purpose is concerned, sub-section (15) of Section 2 of the Act is required to be perused, which reads as under :-

"2. In this Act, unless the context otherwise requires,-

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(15) "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility; "

Taking into consideration the provisions of law, as indicated hereinabove, it appears that the C.I.T. has recognized the assessee as a trust for a charitable purpose under Section 12A(a) of the Act, vide Annexure 'E' dated 21st April, 1982. Reading the registration, it becomes clear that the application has been entered in the Register maintained in the office of the Commissioner. Respondent No.2-I.T.O. rejected the application on the ground that the object of the Trust is to help by giving financial aid to the employees of the Gujarat Law Society in cases of death of an employee during his / her services, illness or permanent disability which incapacitates the employee to discharge his / her duties. In the opinion of the Income Tax Officer, it was restricted only to the employees of the assessee and, therefore, the object cannot be said to be of general public utility. It is in view of this, the I.T.O. rejected the prayer of exemption under Section 80G of the Act and refused to grant exemption.

10. It is required to be noted that the registration of a charitable trust under Section 12A is not an idle or

empty formality. This is apparent from the tenor of the provisions of Section 12A. It requires that not only an application should be filed in the prescribed form, setting out the details of the origin of the Trust, but also the names and addresses of the Trustees and / or managers should be furnished. The Commissioner of Income Tax has to examine the objects of creation as well as an empirical study of the past activities of the applicant. The C.I.T. has to examine that it is really a charitable trust or institution eligible for registration. It is required to be noted that the Trust is granting benefits to the staff of 16 different institutes, the names of which are appearing at page 44. The staff working in these institutes, on becoming members, are getting the benefits of the scheme. Thus, the staff members of all these institutes become entitled to get the benefit of the scheme. The object beneficial to a section of the public is an object of "general public utility". To serve as a charitable purpose, it is not necessary that the object must be to serve the whole mankind or all persons living in a country or province. It is required to be noted that even if a section of public is given benefit, it cannot be said that it is not a trust for charitable purpose in the interest of public. It is not necessary that the public at large must get the benefit. It is required to be noted that considering the objects of general public utility, the matter is to be decided.

11. Framers of the Constitution made a provision with regard to the Directive Principles of State Policy in Part IV of the Constitution of India. It shall be the duty of the State to follow the principles, both in the matter of administration as well as making of laws. It is aimed towards a "Welfare State". It is for the State to make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement. The court is required to interpret a statute so as to advance the object underlying.

12. It will be appropriate to refer to Mayen's Hindu Law and usage, 11th Edition, at page 911. Charitable acts are referred to as acts of construction of tanks, wells with flights of steps, temples, planting of groves, the gift of food, dharmasalas (rest houses) and places for supplying drinking water, the relief of the sick, the establishment of processions for the honour of deities and so on. Gifts for the promotion of education and knowledge are considered specially meritorious.

13. Imparting education is a must. It is the

responsibility of the State to provide not only sufficient number of institutes, but the staff, adequate and qualified, to run the institute, of course, within the limits of its economic capacity and development. Since centuries, people interested in educating the pupils / students have taken keen interest in establishing and running the institutes. They have rendered valuable services to the society and played important role in development of society. Many persons not able to take part in person, have by donations, tried their best to serve the society. Obligation of the society on a human being is such that practically even if one serves the society, for the whole life, he will remain indebted to the society. However, human being is trying his best to get satisfaction by doing something for the society and one would prefer educational activities.

14. State has a control over the activities of the Trust with a view to see that there is no waste or misuse of funds collected by citizens for a common purpose. Even educational institutes are controlled by the State. Trust runs the institutes with the object of general public utility. Ultimately, pupils / students will be benefited by the activities of the institutes run with the aid of the beneficiaries of the Trust and hence, provisions would be attracted. Trust which is a charitable Trust under the provisions contained in the Bombay Public Trusts Act and registered by the C.I.T. for the purpose of charity is for the benefit of the staff of the Institutes engaged in providing education. Institutes are run by qualified staff. Object of the trust in creating the fund is to provide aid in case of sickness and disablement which otherwise is the duty of the State to provide the assistance within the limits of its economic capacity.

15. In our opinion, looking to the scheme of the Trust, which is produced on the record, it is clear that the same is intended to benefit a section of the public, which certainly can be distinguished. The persons who are entitled to get the benefit should be identifiable. In the instant case, the Trust is created under a Trust Deed dated 21st July, 1981. The Rules and Regulations are also framed vide Annexure 'C'. The funds are to be utilized for

For the purpose of availing of the benefit, the employee has to become a member on payment of entrance fees, and is required to make a contribution to the fund. The Trust was created with a view to provide assistance in

case of sickness etc. Rules and Regulations are made for the purpose of administering the funds in the interest of the employees. At the relevant time, application for registration was required to be made for registration of charitable or religious trust or institution in Form No.10A under Rule 17A read with Section 12A(a) of the Act. Rule 17A refers to an application for registration of charitable or religious trust, etc. Rule 17A(a) reads as under :-

"17A. An application under clause (a) of section 12A for registration of a charitable or religious trust or institution shall be made in duplicate in Form No.10A and shall be accompanied by the following documents, namely :-

(a) where the trust is created, or the institution is established, under an instrument, the instrument in original, together with one copy thereof; and where the trust is created, or the institution is established, otherwise than under an instrument, the document evidencing the creation of the trust or the establishment of the institution, together with one copy thereof;

Provided that if the instrument or document in original cannot conveniently be produced, it shall be open to the Chief Commissioner or Commissioner to accept a certified copy in lieu of the original;

(b) where the trust or institution has been in existence during any year or years, prior to the financial year in which the application for registration is made, two copies of the accounts of the trust or institution relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up."

It is also required to be noted that once the registration under Section 12A(a) of the Act is granted, the grant of benefit cannot be denied. The I.T.O. was not justified in refusing the benefits which would otherwise accrue under the Registration. If there was no registration, as contemplated under Section 12A(a) read with Rule 17A, the Revenue would have been justified in making a submission that the benefit cannot be granted, but where the application for registration is submitted and the registration has been granted, the benefit cannot be denied on the ground that the scheme is not for the benefit of public at large.

16. Mr.Kureshi, appearing for the respondents, submitted that, in the instant case, benefit cannot be extended to the Trust in view of a reported decision in Commissioner of Income-tax, Kanpur v. Kamla Town Trust, AIR 1996 SC 620. Learned counsel for the Union of India, relying on this decision, submitted that as the constitution of the Trust makes it clear that it is only for the benefit of the members of the staff working in the institutions of the Law Society, the assessee is not entitled to claim any benefit.

17. The Apex Court in the case of Additional Commissioner of Income-Tax, Gujarat v. Surat Art Silk Cloth Manufacturers Association, (1980) 121 ITR 1, has pointed out that the restricti....

must be read with "the advancement of any other object of general public utility" and not "object of general public utility". Honourable the Supreme Court, considering the English decisions and the Indian law, has pointed out in the aforesaid decision that :-

"... There is no such limitation so far as Indian law is concerned even if a purpose is not within the spirit and intendment of the preamble to the Statute of Elizabeth, it would be charitable if it falls within the definition of "charitable purpose" given in the statute. Every object of general public utility would, therefore, be charitable under the Indian law, subject only to the condition imposed by the

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carrying on of any activity for profit" added in the present Act"

18. The Apex Court, in the case of Commissioner of Income-Tax, New Delhi v. Federation of Indian Chambers of Commerce & Industry, (1981) 130 ITR 186, after applying the principle laid down in the case of Surat Art Silk Cloth Manufacturers Association (*supra*), held as under :-

"... the income derived by the respondent from the activities, such as holding the Indian Trade Fair and sponsoring the Conference of the Afro-Asian Organisation, were for the advancement of the dominant object and purpose of the Federation, viz., promotion, protection and development of trade, commerce and industry in India, and were exempt from tax under section 11(1)(a) read with Section 2(15) "

Considering the Preamble of the Advocates' Act, 1961 and the nature of the various obligatory functions, including the one under Clause (d) of Section 6(1), i.e. safeguarding the rights, privileges and interests of the advocates on its roll, the Court has held that it is enjoined upon every State Bar Council under Section 6(1) of the Act that the primary or dominant purpose of a State Bar Council is the advancement of an object of general public utility within the meaning of Section 2(15) of the Act itself.

19. Apex Court in C.I.T. v. Ahmedabad Rana Caste Association (82 ITR 704 and 140 ITR 1) pointed out that the law recognises no purpose as charitable unless it is for a public charity. That is to say, a purpose must, in order to be charitable, be directed to the benefit of the community or a section of the community. The expression "object of general public utility", however, is not restricted to the objects beneficial to the whole mankind. An object beneficial to a section of the public is an object of general public utility. The section of the community sought to be benefited must undoubtedly be sufficiently defined and identifiable

quality of a public or impersonal nature.

20. The Apex Court in the case of Commissioner of Income-tax, Kanpur v. Kamla Town Trust (*supra*), after considering the facts of that case, viz., the trust deed and the rectification agreement, expressed an opinion as under :-

"... On the contrary it becomes clear on a close reading of relevant provisions of this clause that the objects are specific and charitable in nature. The beneficiaries are also clearly indicated. There is also no ambiguity about the trustees or the trust properties. Thus all the basic requirements for creation of a public charitable trust do exist on the express language of the relevant clauses of rectified deed"

The learned counsel submitted that as it is meant for a restricted class, the provisions will not apply and, therefore, the Special Civil Application should be rejected. In our opinion, considering the decisions of the Apex Court, referred to hereinabove, and considering the provisions of the Act, the submissions made on behalf of the Revenue have no merits. It must be held that the respondent No.2 has erred in denying the benefits under the Act.

21. So far as the penalty proceedings are concerned, as a necessary corollary, the same must be quashed and set aside.

22. In the result, we allow this petition and we quash and set aside an order rejecting the application for exemption under Section 80G(5) of the Act, with a direction to decide the same in accordance with law. The proceedings initiated under Section 148 of the Income Tax Act against the assessee for the assessment year 1984-'85 and the notices issued under Sections 271(1)(a), 271(1)(c) and 273(2)(b) for the assessment year 1985-'86 are hereby quashed and set aside. Rule is made absolute to the aforesaid extent.

April 18, 2000 (D.M. Dharmadhikari, C.J.)

(B.C. Patel, J.)

(apj)